

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

In Re:)	MDL Case No. 1:03-md-1552
)	
)	<i>Securities Fraud, Derivative, and</i>
UNUMPROVIDENT CORP.)	<i>ERISA 401(k) Actions</i>
SECURITIES, DERIVATIVE, &)	
ERISA LITIGATION)	Judge Curtis L. Collier
)	Magistrate Judge Clifford Shirley

SECOND MANAGEMENT ORDER

This Management Order relates to a subset of cases in Multidistrict Litigation No. 1552 ("MDL-1552") comprising various putative securities fraud class action lawsuits brought on behalf of purchasers of UnumProvident securities, a consolidated putative class action brought on behalf of UnumProvident employees participating in the company's 401(k) plan and alleging violations of various fiduciary duties under the Employee Retirement Income Security Act ("ERISA"), and a consolidated shareholder derivative action asserting claims on behalf of UnumProvident against certain of its officers and directors. The Court conducted an initial management conference on January 16, 2004, at which attorneys for the parties discussed the management of pretrial proceedings in these cases, including such matters as the filing and briefing of motions, the development and submission of discovery plans, and charting a course for mediation. As the Court stated, the case should be managed so as to promote efficiency, discourage the duplication of work, minimize costs, and proceed simultaneously with motion practice, discovery, and mediation/settlement.

I. ORDER OF CONSOLIDATION AND COORDINATION

- A. Pursuant to Fed. R. Civ. P. 42(a), the following action is officially **CONSOLIDATED** for all purposes with the previously consolidated putative securities fraud class actions in *In re UnumProvident Corp. Securities Litigation*, lead case number 1:03-cv-49:

Martin v. UnumProvident Corp., et al., Civil Case No. 1:03-cv-162

- B. The following actions, in whatever form they may ultimately take, are hereby **COORDINATED** for pretrial purposes:

<u>Abbreviated Case Name</u>	<u>Civil Case No.</u>
<i>In re UnumProvident Corp. Derivative Litigation</i>	1:02-cv-386
<i>In re UnumProvident Corp. Securities Litigation</i>	1:03-cv-49
<i>Gee, et al. v. UnumProvident Corp., et al.</i>	1:03-cv-147
<i>Azzolini v. CorTS Trust II for Provident Financial Trust I, et al.</i>	1:03-cv-1003
<i>Bernstein v. CorTS Trust for Provident Financing Trust I, et al.</i>	1:03-cv-1005
<i>Finke, et al. v. CorTS Trust II for Provident Financial Trust I, et al.</i>	1:03-cv-1006
<i>Strahle v. CorTS Trust II for Provident Financing Trust I, et al.</i>	1:03-cv-1007

The above-referenced cases are hereinafter collectively referred to as the “Securities Related Actions.”

- C. Currently pending before the Court are two additional motions seeking consolidation. The first is a joint motion filed by the Plaintiffs in the *Azzolini*, *Finke*, and *Strahle* actions seeking to consolidate for all purposes those putative class actions relating to the offering of CorTS Trust II securities. The second is a motion filed on January

15, 2004, by Glickenhau & Co., Lead Plaintiff in *In re UnumProvident Corp. Securities Litigation*, requesting the Court consolidate the *Azzolini*, *Finke*, *Strahle*, and *Bernstein* actions with its own consolidated putative class action and vacate a prior order issued by the United States District Court for the Eastern District of New York naming a lead plaintiff and lead counsel in the *Bernstein* action. The Court will take these motions under advisement. Any party wishing to respond to Glickenhau & Co.'s motion to consolidate must do so on or before **Wednesday, February 4, 2004**. Glickenhau & Co. shall then have until **Wednesday, February 11, 2004**, to file a reply, if so desired.¹

- D. The Securities Related Actions are further **COORDINATED** with the following additional putative class action lawsuits included in MDL-1552:

<u>Abbreviated Case Name</u>	<u>Civil Case No.</u>
<i>In re UnumProvident Corp. ERISA Benefits Denial Actions</i>	1:03-cv-1000
<i>Taylor v. UnumProvident Corp., et al.</i>	1:03-cv-1009

These actions assert claims on behalf of beneficiaries of UnumProvident insurance policies alleging wrongful denial of benefits and are hereinafter collectively referred to as the "Coordinated Benefits Actions."

- E. No action taken pursuant to this Order shall have the effect of making any person, firm, or corporation a party to any action in which it has not been named, served, or added as such in accordance with the Federal Rules of Civil Procedure.

¹The Court notes compliance with some of the obligations imposed on the parties by this Order may be impacted by the Court's ultimate ruling on these consolidation motions. Therefore, the Court aims to issue a ruling on these motions on or before February 18, 2004, and suggests the parties plan accordingly.

II. ORGANIZATION OF PLAINTIFFS' COUNSEL

- A. Pursuant to the Court's Order of November 6, 2003, Glickenhau & Co. shall serve as Lead Plaintiff in the consolidated *In re UnumProvident Corp. Securities Litigation* (Lead Case No. 1:03-cv-49) and the following firm shall serve as Lead Counsel in that case:

Milberg Weiss Bershad Hynes & Lerach LLP
401 B Street, Suite 1700
San Diego, CA 92101
619-231-1058

- B. The following firm shall serve as Lead Counsel for Plaintiffs in the consolidated ERISA 401(k) actions, *Gee, et al. v. UnumProvident Corp., et al.* (Lead Case No. 1:03-cv-147):

Schiffirin & Barroway, LLP
Three Bala Plaza East, Suite 400
Bala Cynwyd, PA 19004
610-667-7706

- C. The following firms shall serve as Co-Lead Counsel for Plaintiffs in the consolidated *In re UnumProvident Corp. Derivative Litigation* (Lead Case No. 1:02-cv-386):

Morris & Morris, LLC
1105 North Market Street, Suite 803
Wilmington, DE 19801
302-426-0400

Branstetter, Kilgore, Stranch & Jennings
227 Second Avenue North
Nashville, TN 37201-1631
615-254-8801

The Court expresses no preference as to the internal organization of Plaintiffs' counsel in the various consolidated shareholder derivative actions and, therefore,

makes no ruling on Co-Lead Counsels' proposed executive committee of Plaintiffs' counsel. Co-Lead Counsel are free to delegate work and responsibilities as they see fit, but shall be themselves ultimately responsible for complying with the obligations and duties imposed by the Court and applicable law.

- D. Pursuant to the Court's Order of December 22, 2003, Lead Counsel in the Coordinated Benefits Actions have been previously designated as follows. In the consolidated *In re UnumProvident Corp. ERISA Benefits Denial Actions* (Lead Case No. 1:03-cv-1000), Lead Counsel for the Plaintiffs is:

Wechsler Harwood LLP
488 Madison Avenue
New York, NY 10022
212-935-7400

Lead Counsel for Plaintiffs in *Taylor v. UnumProvident Corp., et al.* (Case No. 1:03-cv-1009), is:

Alexander, Hawes & Audet, LLP
300 Montgomery Street, Suite 400
San Francisco, CA 94104
415-921-1776

III. ORGANIZATION OF DEFENDANTS' COUNSEL

- A. Lead Counsel for the UnumProvident Defendants² in the consolidated shareholder derivative actions and the various putative securities fraud class actions is:

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

²"UnumProvident Defendants" collectively refers to Defendant UnumProvident Corp. and all corporate subsidiaries and current or former officers, directors, and employees thereof who have been named as Defendants in any of the actions comprising MDL-1552 with the exception of former UnumProvident Corp. Chief Executive Officer J. Harold Chandler.

212-558-4000

- B. Lead Counsel for the UnumProvident Defendants in the consolidated ERISA 401(k) actions, *Gee, et al. v. UnumProvident Corp., et al.* (Lead Case No. 1:03-cv-147), is:

Paul Hastings Janofsky & Walker LLP
1055 Washington Boulevard
Stamford, CT 06901
203-961-7400

- C. Lead Counsel for the UnumProvident Defendants in the Coordinated Benefits Actions is:

Pierce Atwood
One Monument Square
Portland, ME 04101
207-791-1100

- D. Counsel for Defendant J. Harold Chandler is:

Horton Maddox & Anderson PLLC
835 Georgia Avenue, Suite 600
Chattanooga, TN 37402
423-265-2560

- E. Lead Counsel for Defendants Salomon Smith Barney, Inc., CitiGroup, Inc., Prudential Securities, Inc., and First Union Securities, Inc., is:

Skadden Arps Slate Meagher & Flom LLP
Four Times Square
New York, NY 10036
212-735-3000

IV. DUTIES OF LEAD COUNSEL

- A. Lead Counsel shall be generally responsible for conducting the litigation and coordinating activities in their respective case(s). Lead Counsel shall take all steps necessary to ensure the cases are managed efficiently, there is no duplication of effort

or work by Lead Counsel or other Plaintiffs' counsel, and no work is undertaken by any of Plaintiffs' counsel which does not advance the interest of Plaintiffs and the putative class.

- B. Lead Counsel shall have the following responsibilities in their respective case(s), to be carried out either personally or through such counsel as Lead Counsel may designate, with emphasis on these three main areas of responsibility: (1) mediation, (2) discovery, and (3) pretrial litigation and motion practice. Lead Counsel shall:
1. Sign any amended complaints, motions, briefs, discovery requests or objections, or notices on behalf of his Plaintiffs, or those Plaintiffs filing the particular submission;
 2. Conduct all pretrial proceedings on behalf of Plaintiffs that arise while the cases are consolidated in this Court;
 3. Brief and argue motions;
 4. Initiate and conduct discovery;
 5. Act as spokesperson at pretrial conferences;
 6. Employ and consult with experts;
 7. Conduct settlement negotiations with defense counsel on behalf of Plaintiffs and enter into settlements with Defendants;
 8. Call meetings of Plaintiffs' counsel when deemed appropriate;
 9. Establish committees of Plaintiffs' counsel and designate counsel to chair or co-chair such committees;

10. Serve as Plaintiffs' agent for service of process as set forth more specifically in Section X, *infra*;
 11. Distribute to all Plaintiffs' counsel copies of all notices, orders, and decisions of the Court as necessary and to the extent not communicated directly by the Court to all Plaintiffs' counsel, maintain an up-to-date service list available to all Plaintiffs' counsel upon request, and keep a complete file of all pleadings, motions, briefs, discovery requests, notices, orders, and decisions and make those files available for inspection by Plaintiffs' counsel at reasonable hours;
 12. Otherwise coordinate the work of all Plaintiffs' counsel in MDL-1552 and perform such other duties as Plaintiffs' Lead Counsel deem necessary and appropriate; and
 13. Make all work assignments in such a manner as to promote the orderly and efficient conduct of this litigation, and to avoid unnecessary duplication of work and unproductive efforts.
- C. Lead Counsel shall coordinate activities with other Plaintiffs' Lead Counsel in MDL-1552 to avoid duplication and to promote efficiency in the filing, serving, or implementation of pleadings, discovery, and other court proceedings.
- D. Defendants' counsel may rely upon agreements made with Plaintiffs' Lead Counsel. Such agreements shall be binding on all Plaintiffs represented by the agreeing Lead Counsel.

- E. Plaintiffs' Lead Counsel should, to the extent practicable, delegate to additional Plaintiffs' counsel specific tasks within the three main areas of responsibility listed in Subsection B above, in order to move the case forward in a timely and efficient manner while encouraging the participation of the various other Plaintiffs' firms. Such areas of responsibility may include, but are not limited to: (1) consolidated amended complaint; (2) opposition to motions to dismiss; (3) mediation; (4) discovery; and/or (5) class certification. Such delegation of tasks is within the discretion of Lead Counsel; however, Lead Counsel shall promptly notify the Court of such delegation.
- F. Lead Counsel shall add to the above list of responsibilities as deemed appropriate throughout the course of the litigation. Each counsel assigned to a particular task may complete work assignments with the assistance of other Plaintiffs' counsel who have appeared in the coordinated or related action(s), so long as there is no duplication of work or effort, and the work is completed efficiently and economically.
- G. Should Lead Counsel determine that Liaison Counsel is necessary in these cases, Lead Counsel shall apply to the Court for the designation of suggested counsel to fill that role. This application should include the duties Lead Counsel envisions Liaison Counsel will fulfill and the scope of Liaison Counsel's authority. Lead Counsel may submit more than one name of an attorney or firm and ask the Court to select one attorney or firm from the list of suggestions.

V. DISCOVERY PLAN

- A. The Court **ORDERS** the parties in the Securities Related Actions to develop one or more Joint Discovery Plan(s) and submit such proposed plan(s) to Magistrate Judge Clifford Shirley on or before **Monday, March 15, 2004** at the following address:

United States Magistrate Judge C. Clifford Shirley, Jr.
800 Market Street, Suite 144
Knoxville, TN 37902

- B. Upon receiving Magistrate Judge Shirley's approval, the Joint Discovery Plan(s) shall be filed with the Court.
- C. The Joint Discovery Plan shall generally conform with the requirements of Fed. R. Civ. P. 26(f) and specifically address the following matters:
1. A timeline and sequential framework for discovery;
 2. A schedule for the filing and briefing of summary judgment motions;
 3. A proposed time and method for the Court to conduct any necessary *Daubert* hearings regarding proposed expert witnesses;
 4. Measures to centralize and/or coordinate interrogatories, requests for production of documents, deposition requests, subpoenas, and other written discovery efforts so as to minimize the total number of such items;
 5. Measures to coordinate and schedule depositions so as to avoid conducting multiple depositions of the same individual;
 6. A proposed system for identifying by unique number or symbol each document produced or referred to during the course of the litigation;
 7. Measures to coordinate production of documents by Defendants.

VI. MOTION PRACTICE SCHEDULE

A. Shareholder Derivative Actions

1. Plaintiffs' Lead Counsel for the consolidated *In re UnumProvident Corp. Derivative Litigation* actions (Lead Case No. 1:02-cv-386) shall file a Consolidated Complaint within forty-five (45) days of the entry of this Order.
2. Defendants shall have thirty (30) days from the filing of the Consolidated Complaint to answer, move, or otherwise respond. Defendants need not respond to any of the individual derivative complaints and the Consolidated Complaint will be deemed the operative pleading.
3. The parties have indicated no motion to dismiss is anticipated in the Shareholder Derivative Actions.

B. ERISA 401(k) Actions

1. Plaintiffs' Lead Counsel in *Gee, et al. v. UnumProvident Corp., et al.*, filed a Consolidated Amended Class Action Complaint on January 12, 2004.
2. As set out in the Court's Order entered January 7, 2004, Defendants shall have forty-five (45) days from the filing of the Consolidated Amended Class Action Complaint to answer, move, or otherwise respond.
3. Upon the anticipated filing of a motion to dismiss by Defendants, Plaintiffs shall have forty-five (45) days to respond thereto and Defendants shall have fifteen (15) days to reply.
4. If the Court denies Defendants' anticipated motion to dismiss, Plaintiffs shall file a motion for class certification within thirty (30) days of the entry of an

Order reflecting such action. Defendants shall have sixty (60) days to respond thereto and Plaintiffs shall have forty-five (45) days to reply.

C. Securities Fraud Actions

1. Glickenhau & Co., Lead Plaintiff in the consolidated *In re UnumProvident Corp. Securities Litigation* actions, filed a Consolidated Complaint on January 9, 2004.
2. In light of the pending motions to further consolidate the various securities fraud actions and the possibility Glickenhau & Co. may be required to amend its Consolidated Complaint, the Court hereby **STAYS** Defendants' obligation to answer, move, or otherwise respond to any and all of the current pleadings in the various securities fraud actions³ until such time as the Court rules on the pending consolidation motions.
3. Once an operative pleading(s) is in place and acknowledged by the Court, Defendants shall have thirty (30) days to answer, move, or otherwise respond thereto.
4. Upon the anticipated filing of a motion to dismiss by Defendants, Lead Plaintiff(s) shall have forty-five (45) days to respond thereto and Defendants shall have fifteen (15) days to reply.

³This stay applies only to the following actions: *In re UnumProvident Corp. Securities Litigation* (Lead Case No. 1:03-cv-49), *Azzolini v. CorTS Trust II for Provident Fin. Trust I, et al.* (Case No. 1:03-cv-1003), *Bernstein v. CorTS Trust for Provident Fin. Trust I, et al.* (Case No. 1:03-cv-1005), *Finke v. CorTS Trust II for Provident Fin. Trust I, et al.* (Case No. 1:03-cv-1006), and *Strahle v. CorTS Trust II for Provident Fin. Trust I, et al.* (Case No. 1:03-cv-1007).

5. If the Court denies Defendants' anticipated motion to dismiss, Lead Plaintiff(s) shall file a motion for class certification within thirty (30) days of the entry of an Order reflecting such action. Defendants shall have sixty (60) days to respond thereto and Lead Plaintiff(s) shall have forty-five (45) days to reply.

VII. MEDIATION

On or before **Wednesday, January 28, 2004**, the parties in the Securities Related Actions shall jointly submit an agreed upon list of proposed individuals to serve as mediator(s) for the Securities Related Actions. Such proposed individuals should be persons of considerable stature within the legal community and preferably have experience mediating large class action lawsuits, knowledge of issues related to securities and shareholder derivative litigation, and some ties and familiarity with the United States District Court for the Eastern District of Tennessee. While the Court strongly prefers the use of a single mediator for all of the Securities Related Actions, the parties may jointly submit, within the time frame designated above, a brief and concise statement setting forth any considerations justifying the appointment of multiple mediators. The Court will consider the suggestions of the parties, but reserves the right to appoint a mediator(s) not appearing on the proposed list.

VIII. COMPLETED DISCOVERY

- A. All Plaintiffs' attorneys in any of the Securities Related Actions shall make available (on reasonable request) their discovery (depositions, document productions, interrogatories and responses, requests for admission and responses, *etc.*) conducted to date to other Plaintiffs' counsel in an effort to streamline further discovery and

reduce the risk of unnecessary expenditures of time and cost associated with pursuing redundant discovery.

- B. Any outstanding written discovery which has been served on Defendants by Plaintiffs in any of the Securities Related Actions is hereby withdrawn.

IX. TRANSFEROR COURT ORDERS

With the exception of order naming a lead plaintiff and lead counsel in the *Bernstein* case (Case No. 1:03-cv-1005) which Glickenhau & Co. challenges in its pending consolidation motion (*see supra* Section I.C), any orders, including protective orders, previously entered in these actions, including orders entered by any transferor court, shall remain in full force and effect and shall apply to these consolidated and coordinated actions. However, such orders shall be subject to any modifications Lead Counsel may submit to this Court for its approval within thirty (30) days of this Order becoming final.⁴

X. SERVICE OF PAPERS

- A. Service of any papers on Plaintiffs in these consolidated and coordinated actions shall be deemed to be complete for all purposes when copies are served on Plaintiffs' Lead Counsel and Liaison Counsel, if and where so designated consistent with this Order.
- B. Service of any papers on UnumProvident Defendants shall be deemed completed for all purposes when a copy is served on:

Susan Kerr Lee
Grant Konvalinka & Harrison PC
Ninth Floor, Republic Centre
633 Chestnut Street

⁴This Order will become final either thirty (30) days after it is entered, or on a later date if objections or proposed amendments to the Order are filed within thirty (30) days. *See, infra*, § XVII.

Chattanooga, TN 37450
423-756-8400

- C. Service of any papers on Defendant J. Harold Chandler shall be deemed completed for all purposes when a copy is served on:

William Horton
Horton Maddox & Anderson PLLC
835 Georgia Avenue, Suite 600
Chattanooga, TN 37402
423-265-2560

- D. Service of any papers on Defendants Salomon Smith Barney, Inc., CitiGroup, Inc., Prudential Securities, Inc., and First Union Securities, Inc., shall be deemed completed for all purposes when a copy is served on:

Jay Kasner
Skadden Arps Slate Meagher & Flom LLP
Four Times Square
New York, NY 10036
212-735-3000

- E. The Court directs the attention of the parties to its contemporaneous Order adopting a Revised Service List for all actions in MDL-1552. All future filings with the Court in these coordinated and consolidated actions should utilize the service list set out in that Order.

XI. ACTIONS PENDING IN OTHER JURISDICTIONS

Counsel for the parties in the Securities Related Actions are to promptly bring to the Court's attention any other related actions filed in any state or federal court upon learning of the pendency of such action. To the extent any state court actions related to the Securities Related Actions are not stayed to minimize or eliminate the possibility of duplicative litigation or inconsistent adjudication, counsel in the Securities Related Actions shall use their best efforts to coordinate with counsel in

those state and other cases with respect to the pretrial management of all cases, including discovery, in aid of efficient administration of all of these related cases.

XII. ADMISSION OF ATTORNEYS

Pursuant to Rule 1.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation and 28 U.S.C. § 1407(f), each attorney of record in any action transferred to this Court in this MDL-1552 proceeding and who is a member in good standing of the bar of any district court of the United States, is admitted to practice before this Court in connection with these proceedings unless specifically objected to for any reasonable cause by any party within twenty (20) days after the attorney appears herein.

XIII. COURT APPEARANCES

In general, only Plaintiffs' Lead Counsel, Liaison Counsel, or other designated Plaintiffs' counsel may appear before the Court in these consolidated and coordinated actions at any given time to argue motions, appear at status conferences, or to report to the Court on matters affecting the consolidated and coordinated actions. In general, only one attorney may appear before the Court at any given time, unless Lead Counsel determines an additional attorney is required to adequately present an argument or issue to the Court, or to adequately protect the interests of a Plaintiff subclass.

XIV. TIME AND EXPENSE RECORDS

All Plaintiffs' counsel involved in the Securities Related Actions shall keep a daily record of their time spent and expenses incurred in connection with this litigation, indicating with specificity the hours, location, and particular activity for which the time was recorded or expense incurred. Plaintiffs' counsel shall send a copy of all such recorded time and expenses to Plaintiffs'

Lead Counsel for the action(s) to which such time and/or expenses are related every thirty (30) days, beginning thirty (30) days from the entry of this Order. In conjunction with their first such submission, counsel shall additionally submit to the relevant Plaintiffs' Lead Counsel a total reconciliation of time spent and expenses incurred in these actions from inception through the date of the entry of this Order. Lead Counsel shall maintain these time and expense records along with its own, and shall provide them to the Court, under seal, upon the Court's request for such information.

XV. DOCUMENT PRESERVATION

In addition to any legal and ethical duties to preserve documents and evidence to which the parties are already subject, the parties to this litigation shall also be subject to an Order for Preservation of Records, which Lead Plaintiffs' Counsel in the Securities Related Actions shall jointly file with the Court within fourteen (14) days of this Order becoming final.⁵

XVI. ANTICIPATED COMPLETION DATE OF ALL PRETRIAL MATTERS

The parties agree that a reasonable date for completion of all pretrial matters, discovery and settlement efforts is December 1, 2005. Accordingly, the parties should be prepared for trials on the merits after December 1, 2005, in the Districts where the actions were originally filed.

XVII. FINALITY: OBJECTIONS AND PROPOSED AMENDMENTS

The parties shall have thirty (30) days from the entry of this Order to file any objections or proposed amendments to the Order. Any such objections or proposed amendments shall not be a reargument for proposals previously submitted and considered by the Court. The Second

⁵This Order will become final either thirty (30) days after it is entered, or on a later date if objections or proposed amendments to the Order are filed within thirty (30) days. *See, infra*, § XVII.

Management Order shall become final after the Court has ruled on any objections or proposed amendments. In the event no objections or proposed amendments are filed, the Order shall become final thirty (30) days from its entry. Any Plaintiffs' counsel that wishes to make any changes or amendments to this Order after it becomes final shall coordinate such efforts with the appropriate Plaintiffs' Lead Counsel, who may then make a motion to the Court.

SO ORDERED.

ENTER:

CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE